Supreme Court of the United States

October Term, 19[illegible]

No. 1,908

FILED

JUL 8 1970

DIANA KEARNY POWELL,

Petitioner,

v.

COMMITTEE ON ADMISSIONS AND GRIEVANCES,

Respondent.

DIANA KEARNY POWELL,

Petitioner,

v.

JOHN MITCHELL,
United States Attorney General,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DIANA KEARNY POWELL
1900 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Petitioner, pro se

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Supreme Court of the United States

October Term, 1969

No. 1,508

DIANA KEARNY POWELL,

Petitioner,

v.

COMMITTEE ON ADMISSIONS AND GRIEVANCES,

Respondent.

DIANA KEARNY POWELL,

Petitioner,

v.

JOHN MITCHELL,
United States Attorney General,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Diana Kearny Powell respectfully prays this Court for an order (1) vacating its denial of the petition

for writ of certiorari, entered on June 8, 1970, in the above-entitled cases, and (2) granting the petition. As grounds for reconsideration, petitioner states the following:

INTERVENING CIRCUMSTANCES AND GROUNDS NOT PREVIOUSLY PRESENTED

1. Involvement of the Chief Justice should not preclude, and in fact should be cause for, his participation in granting rehearing.

The Chief Justice did not participate in the denial of the petitions for writ of certiorari, presumably because of his involvement in both cases.

In the disbarment proceeding he was a witness against respondent Powell, although, he admitted, a reluctant one. On the basis of his testimony as to his recollection, which she was not permitted to test against the documentary records on which she relied, she was unjustly found guilty of professional misconduct in filing the complaint to the Attorney General that he had aided fraud in basing a decision on false statements of fact, and refusing to review and correct the plain error.

The Chief Justice has no personal interest in the disbarment. Presumably, he has a proper interest in truth, justice and the correction of gross miscarriage of justice, particularly when it is a consequence of his own error.

As Chief Justice, as Circuit Judge of the Circuit in which the erroneous decisions were made, and as the judge writing the opinion in which the errors of fact appeared – dates of death and precise wording of documents and decisions are not debatable matters susceptible of judicial interpretation – he has the authority and the special obligation to correct the error and injustice to which he has contributed. Petitioner submits

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that the precedent for participation in the granting of certiorari under the circumstances is established in *Bartkus v. Illinois,* 355 U.S. 281, 356 U.S. 969, 359 U.S. 121, and in *Ladner v. United States,* 355 U.S. 282, 356 U.S. 969, 358 U.S. 169.

Petitioner points out that the abstention of the Chief Justice leads to the inference that the errors and the refusal to review and correct them were and still are intentional. There is no possible *bona fide* question as to the errors, which are too plain to be explained away, even by the most inventive circumlocutions. Petitioner can very well understand, although she does not condone, the reluctance of judges of lower courts and of members of the bar to confront the Chief Justice with the provocative question of why he continues to refuse to correct injustices committed by him.

The Chief Justice cannot wash his hands of this responsibility or cover the errors with judicial robes. God is not mocked and truth speaks for itself. If the Chief Justice has been acting through honest error, it will be his wish as well as his duty to exercise his authority to call for review and correction of the injustice for which he is responsible. Until that is done, it stands as a blot upon an otherwise exceptionally outstanding and clean record.

2. **The Chief Justice has the obligation to cease permitting the use of his involvement as a shield for fraud.**

In respect to the action in the nature of mandamus directed to the Attorney General, the interest of the Chief Justice, which it is assumed is the cause for his abstention, is that he is named as aiding the fraud of a bank and two attorneys. The sole involvement of the Chief Justice is his failure to correct error and the inference that his silence connotes intent. It is pointed out

that his involvement, commencing in lack of candor and subtle deception of the court by the attorneys complained of, has been used to shield them from the prosecution of their fraudulent acts. His failure to take part in consideration of the petition, or for reconsideration, suggests he has an interest in suppressing prosecution.

The Chief Justice is in a position to use his office and particular relationship to the case as an instrument of justice rather than as a shield for crime. Petitioner respectfully points out that he has the authority and the special obligation to disassociate himself from the fraud by correcting the errors induced by misleading statements of counsel, and to review or to act *sua sponte* on the mandamus.

Petitioner respectfully suggests that this positive action would clearly be in the interest of justice and respect for the courts and law, and would be in the highest traditions of judicial detachment and objectivity.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writs of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgments of the courts below.

Respectfully submitted,

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Petitioner, pro se

CERTIFICATE OF GOOD FAITH

Petitioner Diana Kearny Powell hereby certifies that this petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 58(2).

DIANA KEARNY POWELL